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10/521,031	01/12/2005	Robert H Murphy	20020001-US	6558
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Vern Maine & Associates			NGUYEN, LUONG TRUNG	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,031	<b>Applicant(s)</b> MURPHY ET AL.
	<b>Examiner</b> LUONG T. NGUYEN	<b>Art Unit</b> 2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 August 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,7-13,15,16 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,7-13,15,16 and 20-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/06)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed on 8/05/2008 have been fully considered but they are not persuasive.

In re pages 8-9, Applicants argue that the Applicant's disclosure, and the claims as amended, are directed particularly to *thermal* imaging systems and configurations thereof for sensing the thermal emission pattern of an external scene not otherwise illuminated. Thermal imaging systems have unique characteristics and requirements not present in illuminated scenes where *reflected* energy, rather than *thermal emission*, is the basis of the imaging system. Neither Bakhle nor Medina is directed to thermal imaging where the internal radiant flux of the system is orders of magnitude greater than the sensed external scene thermal radiation.

In response to applicant's arguments, the recitation "*thermal imaging system*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *thermal* imaging systems and configurations thereof for sensing the *thermal emission pattern of an*

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*external scene* not otherwise illuminated) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, regarding claim 1, the Applicants amended with the recitation “thermal imaging system,” which has not been given patentable weight because the recitation occurs in the preamble. And Applicants amended claim 1 with limitation “a lens adapted to focus external scene radiation comprising heat radiation from a scene.” The Examiner considers that Bakhle or Medina do disclose this feature. Bakhle discloses that a CMOS image sensor image array is exposed to light from a scene image (figures 1A-1B, column 1, lines 15-25). Medina discloses a flash lamp or laser 21 illuminates object 22 (figure 2, column 3, lines 50-61). The light illuminates the scene image is considered as external scene radiation comprising heat radiation since it is well known in the art that a light source is called as a heat radiation type (see Komatsu et al., US 5,162,943).

In re page 10, Applicants argue that Medina discloses a video-imaging camera system, again not directed to the unique characteristics of thermal emission-based imagery and system.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *the unique characteristics of thermal emission-based imagery and systems*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In re page 11, Applicants argue that Applicant's use of the term "lens" in claims 7 and 20 are intended to refer to the entire lens assembly or lens set, with its shutter being outboard of the complete lens set so that the full influence of the complete lens set is included in the closed state image signal.

In response, it is noted that the features upon which applicant relies (i.e., to the entire lens assembly or lens set, with its shutter being outboard of the complete lens set so that the full influence of the complete lens set is included in the closed state image signal) are not recited in the rejected claims 7 and 20. Instead, claim 7 or claim 20 recites limitation "the shutter has a lens side surface that is located within five millimeters of the front of the lens." The Examiner considers that Sato does teach this feature, Sato teaches the shutter 2 is disposed at a position which is distanced from the imaging-side surface of the lens L2 by 1.97 mm toward the image side (column 4, lines 48-51).

#### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(e). The present application claims priority to PCT Application No. PCT/US2003/027034, filed 8/28/2003, which claims the benefit of U.S. Provisional Application No. 60/412,377, filed 9/20/02.

#### ***Claim Objections***

3. Claims 1-4, 7-9, 17-18 are objected to because of the following informalities:

Claim 1 (line 6), "the shutter, lens and FPA comprising an imaging system" should be deleted since claim 1 has been recited "A thermal imaging system comprising a focal plane array (FPA), a lens, a shutter" on lines 1-5).

Claims 17-18 should be canceled since the Applicants stated that claims 17-18 are canceled and replaced with new claims 21 and 22.

Claims 2-4, 7-9 are objected as being dependent on claim 1.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 8-13, 15-16, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakhle et al. (US 6,061,092) in view of Medina US 5,081,530).

Regarding claim 1, Bakhle et al. discloses a thermal imaging system comprising:  
a focal plane array (CMOS sensor image array 18, figures 1A-1B, column 1, line 50 – column 2, line 13) having a plurality of pixels;  
a lens (included in digital camera 10, figures 1A-1B) adapted to focus external scene radiation comprising heat radiation from a scene in front of the lens onto the FPA behind the lens (figures 1A-1B, column 1, lines 15-24);

a shutter (shutter 12, figures 1A-1B, column 1, line 50 – column 2, line 13), the shutter having a closed state that prevents the external scene radiation from entering and allows internal radiant flux of the imaging system to reach detectors of the FPA as a spatially uniform reference image signal and an open state that allows an open state image signal that includes the external scene radiation and the internal radiant flux of the system to reach detectors of the FPA;

a signal processing module (dark image subtraction unit 22, figures 1A-1B, column 1, line 50 – column 2, line 13) operatively coupled to the FPA, and adapted to correct the open state image signal based on the reference image signal.

Bakhle et al. fails to specifically disclose the shutter is located in front of the lens. However, Medina teaches a camera in which the shutter 24 is located in front of lens 25 and could be placed behind the lens (figure 2, column 3, lines 62-67). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in Bakhle et al. by the teaching of Medina in order to focus the radiation light from a scene onto the CMOS sensor image array. It is a design choice to dispose the shutter in front of the lens or behind the lens.

Regarding claim 2, Bakhle et al. discloses a shutter controller (solenoid 14, figures 1A-1B) operatively coupled to the shutter, and adapted to command the shutter to its opened and closed states.

Regarding claim 3, Bakhle et al. discloses a system controller communicatively coupled to the shutter controller and the signal processing module, and adapted to control operation of the

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imaging system (a system controller is included in digital camera 10 to control operation of digital camera 10, figures 1A-1B).

Regarding claim 4, Bakhle et al. discloses the system controller is communicatively coupled to a network thereby enabling the imaging system to communicate with other systems also communicatively coupled to the network (Bakhle et al. discloses video camera is coupled to a personal computer through a bus interface, column 2, lines 15-28).

Regarding claim 8, Bakhle et al. discloses wherein for any one session of imaging system operation, each of a plurality of open state image signals are corrected for pixel-to-pixel non-uniformities and offset based on the open and closed state image signal (column 1, line 50 – column 2, line 28).

Regarding claim 9, Bakhle et al. discloses wherein the closed state image signal is periodically generated to account for changes in the imaging system (column 7, lines 19-28).

Regarding claim 10, claim 10 is a method claim of apparatus claim 1; therefore, see examiner's comment regarding claim 1.

Regarding claim 11, Bakhle et al. discloses wherein correcting the open state image signal includes compensating for pixel-to-pixel non-uniformities of the FPA (column 1, line 50 – column 2, line 13).

Regarding claim 12, Bakhle et al. discloses wherein correcting the open state image signal includes compensating for offsets between the opened and closed states of the shutter (column 1, line 50 – column 2, line 13).

Regarding claim 13, Bakhle et al. discloses wherein correcting the open state image signal includes compensating for pixel-to-pixel non-uniformities and offsets between the opened and closed states of the shutter (column 1, line 50 – column 2, line 13).

Regarding claims 15-16, all the limitation of claims 15-16 are included in claim 1; therefore, see examiner's comment regarding claim 1.

Regarding claim 21, see examiner's comment regarding claim 2.

Regarding claim 22, see examiner's comment regarding claim 3.

6. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakhle et al. (US 6,061,092) in view of Medina US 5,081,530) further in view of Sato (US 6,181,484)

Regarding claims 7 and 20, Bakhle et al. and Medina fail to specifically disclose wherein the shutter has a lens side surface that is located within five millimeters of the front of the lens. However, Sato teaches the shutter 2 is disposed at a position which is distanced from the imaging-side surface of the lens L2 by 1.97 mm toward the image side (column 4, lines 48-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

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was made to modify the device in Bakhle et al. and Medina by the teaching of Sato in order to provide a compact camera.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUONG T. NGUYEN whose telephone number is (571) 272-7315. The examiner can normally be reached on 7:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID L. OMETZ can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David L. Ometz/  
Supervisory Patent Examiner, Art Unit  
2622

/L. T. N./  
11/22/08